REMARKS

The claims have been amended to meet the objection and rejections under 35 USC 112 paragraphs 1 and 2 and 35 USC 101. In particular, references to enantiomers,. racemates and solvents have bee removed from claim 1 and claim 10 has been replaced by claim 11 which is written as a traditional method of production claim.

Turning now to the issues raised under 35 USC 103(a), the Examiner alleges claims 1 and 10 to be obvious over Takeno PCT Publication WO 9638415.The applicant respectfully disagrees. Using the definitions of Takeno, the compound of formula IV claimed in claim 1 would be a compound wherein A is 2-ethylpyridyl selected out of Takeno's broad definition of "nitrogenous heterocycle", m is 2 selected out of Takeno's 0, 1 or 2, W is oxygen selected out of Takeno's oxygen or carbonyl, R^1 is hydroxy selected out of Takeno's hydroxy, an ester residue or a substituted imide group; R^2 and R^3 are each hydrogen selected out of Takeno's hydrogen, alkyl, aralkyl, alkanoyl, benzoyl, etc and R^4 is hydrogen selected from Takeno's hydrogen, ... The applicant's attorney does not read Japanese but it seems that none of the formulae depicted in Takeno show the specific compound of formula IV of the present application. The English language abstract states that the compounds are hypoglycemic agents. The Japanese text contains data as set out on page 70. Applicant's attorney has had the names of the compounds for which data are provided translated. They are as follows:

Example 7:	(s)2-ethylamino-3-{4-[2-(5-methyl-2-phenyl-4-oxazolylethoxy]phenyl} propionic acid;
Example 8:	(s)2-thioethylamino-3-[4-[2-(5-methyl-2-phenyl-4-oxazolyl)ethoxy] phenyl propionic acid;
Example 10	(s)2-isopropylamino-3-{4-[2(5-methyl-2-phenyl-4-oxazolyl)ethoxy]phenyl}propionic acid;
Example 13	(s) 3-{4-[2-(5-methyl-2-phenyl-4-oxazolyl)ethoxy]phenyl}-2-n-propylamino propionic acid;
Example 17	(s) 2-n-butylamino-3-{4-[2-(5-methyl-2-phenyl-4-oxazolyl)ethoxy]phenyl}propionic acid;

Example 20 (s) isobutylamino-3-{4-[2-(5-methyl-2-phenyl-4-oxazolyl)ethoxy]phenyl} propionic acid;

Example 27 (s) 2-benzylamino-3-{4-[2-(5-methyl-2-phenyl-4-oxazolyl)ethoxy]phenyl}propionic acid;

Example 30 (s) 2-thiomethylamino -3-{4-[2-(5methyl-2-phenyl-4-oxazolyl) ethoxy]phenyl}propionic acid;

Example 55 (s) 2-isopropylamino-3-{4-[2-(5-methyl-2-phenyl-4-oxazolyl)ethoxy]phenyl} propionic acid.HCl

That is to say, they are compounds wherein A is 5-methyl-2-phenyl-4-oxazolyl, and at least one of R^2 and R^3 is not hydrogen. Thus the apparently preferred compounds of Takeno are quite different from the compound of the present invention.

As explained in the present application, compounds of formula IV are intermediates for use in production of pioglitazone which significantly improve the yield thereof. Example 2 of the present application gives a yield of 25.6%. The yield obtained by the process of WO02/088120 is less than 10%. Nothing in the art would point to production of the compound of formula IV nor to its surprising property of being the means to effect such an improvement in the yield of pioglitazone. This involves selection of one specific option from several options for six different variables set out in Tenaka's formula. The art gives no reason for making such a selection.

In **In re Baird** (29 USPQ2d 1550) the Court of Appeals for the Federal Circuit pointed out that "The fact that a claimed compound may be encompassed by (prior) disclosed generic formula does not by itself render that compound obvious". The court went on to find that the prior generic disclosure did not "teach or fairly suggest selection" of the compound now claimed, pointing out that the specific teaching of the prior art had been of complicated analogs of the compound now claimed. A similar situation exists here.

It is therefore submitted that claim 1 meets the requirements of 35 USC 103 have been met.

In view of the foregoing, it is submitted that this application is in condition for allowabnce and an early action to this end is respectfully solicited.

Respectfully submitted,

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Reg. No. 31, 053 (212-708-1915)